LIBRARY
SUPREME COURT. U. S.

Office Supreme Court, U.S.
FILED
MAR 13 1969
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1050

SOUTHERN PACIFIC COMPANY, a corporation,
Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Appellee.

On Appeal from the Supreme Court of the State of California

Motion to Dismiss or Affirm

MARY MORAN PAJALICH
RODERICK B. CASSIDY
TIMOTHY E. TREACY
JAMES A. BLUMBERG
5072 State Building
San Francisco, California 94102
Attorneys for Appellee The Public Utilities Commission of the State of California

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	2
Statutes Involved	2
Questions Presented	3
Statement of the Case	3
Argument	5
Conclusion	12
Appendix A	

TABLE OF AUTHORITIES CITED

Cases	Pages
Bloom v. Illinois, 391 U.S. 194 (1968)	6, 7, 9, 12
Brotherhood of Loc. Fire & Eng. v. Bangor & Aroostook R. Co., 380 F.2d 570 (1967)	10
Carfer v. Caldwell, 200 U.S. 293 (1906)	8
Consolidated Rendering Co. v. Vermont, 207 U.S. 541 (1908)	8
De Stefano v. Woods, 392 U.S. 631, 20 L.Ed.2d 1308 (June 17, 1968)	6
Duncan v. Louisiana, 391 U.S. 145 (1968)	12
Gompers v. Buck's Stove & Range Co., 221 U.S. 418 (1911)	10
Interstate Commerce Commission v. Brimson, 154 U.S. 447 (1894)	7, 8, 9
In re Bruns, 15 Cal.App.2d 1, (1936)	11
In re Morris, 194 Cal. 63 (1924)	10, 11
In re Victor, 220 Cal. 729 (1934)	8
McCrone v. United States, 307 U.S. 61 (1939)	10
National Labor Relations Board v. Warren Co., 350 U.S. 107 (1955)	7
Parker v. United States, 153 F.2d 66 (1946)	10
United States v. United Mine Workers, 330 U.S. 258 (1946)	10
Van Hoosear v. Railroad Comm., 189 Cal. 228 (1922)	8

Statutes	
28 U.S.C. § 1257(2)	2
California Public Utilities Code:	
§ 312	8
§ 2104	12
§ 2105	8
§ 2106	8
§ 2110	12
§ 2113	2, 4, 8

Pages

California Code of Civil Procedure:
§ 1209 11
§ 1218 ..... 2, 11
California Government Code, § 18852 9
California Penal Code, § 166 11

CONSTITUTION

California Constitution, Art. 12, Section 22 ..... 2, 4, 8

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1050

SOUTHERN PACIFIC COMPANY, a corporation,
Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Appellee.

On Appeal from the Supreme Court of the State of California

Motion to Dismiss or Affirm

OPINIONS BELOW

The Opinion and Order of the Public Utilities Commission of the State of California ("Commission") in Decision No. 74006 are dated April 16, 1968. Copies thereof are printed in Appendix A of appellant's Jurisdictional Statement. The final order of the Supreme Court of the State of California, S.F. No. 22610, issued September 25, 1968, which reviewed the Commission's Order, is reported in the Advance California Reports, 69 A.C. No. 9, page 1 of the Minutes, and is printed in Appendix B of appellant's Jurisdictional Statement. Notice of Appeal was timely filed December 20, 1968.

JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(2). As stated above, Notice of Appeal was timely filed, but appellant has failed to docket the case in accordance with Rule 13 of the Rules of this Court. Appellant's Jurisdictional Statement was docketed on February 17, 1969, more than ninety days after the entry of judgment by the California Supreme Court on September 25, 1968. The period for docketing the case has not been extended by a Justice of this Court, nor has application been made for such an extension of time within the period sought to be extended (Rule 34, paragraph 2).

Counsel for appellant claim that they were unaware that "complete docketing of this appeal . . . was required by December 24, 1968" under the provisions of Rule 13, as revised, effective October 2, 1967. (Juris. Stat. p. 2 footnote.) However, under Rule 13, prior to the 1967 revisions, it was appellant's duty to docket the case not more than *sixty* days after the Notice of Appeal has been filed. Thus, the period within which to docket the case was shorter under the old rule than under the new.

Counsel do not claim ignorance of the prior rules. They do not explain their failure to comply with the present rules. The Jurisdictional Statement was not timely filed and the appeal should be dismissed.

STATUTES INVOLVED

Certain of the statutes involved are set forth at pages 2-3 of the Jurisdictional Statement and Appendix C thereto. Other statutes involved besides Article 12, Section 22, of the California Constitution, Section 2113, California Public Utilities Code and Section 1218 California Code of Civil Procedure, cited by appellant, are: Sections 1209, 1211,

1212, 1217, 1222 of the California Code of Civil Procedure; Section 166(4) California Penal Code; Sections 312, 2100, 2105, 2106, 2110 California Public Utilities Code, attached hereto as Appendix A.

QUESTIONS PRESENTED

The questions presented by appellant are not completely and accurately stated. Based upon the record, and decisions of the Commission and the California Supreme Court, the questions before this Court may be stated as follows:

1. Can a State agency with plenary powers derived directly from the Constitution of the State of California, including the power to punish for contempt, exercise its constitutional contempt power (implemented by its statutory contempt power) to adjudge a party guilty of *civil contempt,* and impose *civil sanctions* pursuant to such judgment, after a hearing has been afforded such party, without violating the due process of law requirements of the Fourteenth Amendment to the Federal Constitution?

2. Is a trial by jury necessary, in order to comply with the due process requirements of the Fourteenth Amendment to the Constitution of the United States, in a state administrative agency proceeding in which a party has been adjudged in civil contempt for failure to obey an order of the agency?

STATEMENT OF THE CASE

Appellant, a common carrier by railroad, operates a commuter passenger service between San Francisco and San Jose, California. It sought to charge parking fees for automobiles using its parking lots adjacent to the stations along the route between those two points. The Commission issued a temporary restraining order on October 10, 1967, directing petitioner to refrain from collecting the parking

charges pending further order of the Commission. Appellant sought a writ of prohibition from the California Supreme Court to enjoin the Commission from enforcing the restraining order, but the writ was denied November 8, 1967. Appellant also sought a writ of review of the Commission's order from the California Supreme Court which was denied December 20, 1967.

In a third proceeding before the California Supreme Court appellant filed a petition for a writ of prohibition to enjoin the Commission from entertaining a contempt proceeding based on appellant's alleged noncompliance with the October 10th order. Simultaneously appellant sought judicial stay of the order. This petition for the writ and stay was denied November 29, 1967.

The Commission, in the meantime, had issued its order in Decision No. 73352, dated November 14, 1967, which directed appellant to show cause why it should not be held in contempt for refusal to comply with the Commission's order, which appellant admits (Juris. Stat. p. 4) was demonstrated by its actions during the period of November 2 through November 8, 1967. The contempt hearing was held before a Commissioner and Examiner on November 30 and December 21, 1967 in the usual manner, pursuant to authority conferred by the California Constitution in Article 12, Section 22 and the California Public Utilities Code Section 2113. On April 16, 1968, the Commission issued its decision (Decision No. 74006, Appendix A, Juris. Stat.) finding appellant in contempt of the Commission and ordering it to pay a fine of $22,000. Appellant filed a petition for rehearing on April 26, 1968, which was denied by the Commission by Decision No. 74174, dated May 28, 1968.

Pursuant to Sections 1756-1770, California Public Utilities Code, appellant petitioned the California Supreme

Court for a writ of review, contending *inter alia* that: (1) the delegation of *criminal contempt* powers to state administrative agencies was a *per se* violation of appellant's right to due process of law under the Fourteenth Amendment of the United States Constitution and (2) that the finding of appellant in contempt of the Commission, without affording appellant a trial by jury, was in contravention of the Fourteenth Amendment of the Constitution of the United States.

On September 25, 1968, the California Supreme Court issued its order affirming the Commission's decision holding appellant in contempt by denying appellant's petition for writ of review. Appellant then filed an action in the Federal District Court of the Northern District of California, No. 50166, to enjoin the Commission from enforcing its order of April 16, 1968. This suit was dismissed on November 10, 1968. Thereafter, appellant filed its Jurisdictional Statement for this Court's consideration.

ARGUMENT

The questions presented are so unsubstantial as not to warrant further argument. Appellant bases its argument on assumptions for which it has presented no evidence nor cited any authority. In the first question presented "whether the power to punish for criminal contempt may be conferred on a state administrative agency" (Juris. Stat. p. 5), appellant admits that this issue is novel and that it has no specific authority for its contention in this regard. As to the second question, appellant assumes, without presenting any basis for the assumption, that the contempt proceedings here involved were proceedings in *criminal* contempt. If, as the California Supreme Court has held below by denial of review, these proceedings were in *civil* contempt,

the opinion of this Court in *Bloom v. Illinois,* 391 U.S. 194 (1968), would not be applicable since it involved criminal contempt only and, therefore, would not be a basis for the jurisdiction of this Court. In other words, the decision of the California Supreme Court in these proceedings was predicated on a nonconstitutional issue, i.e., whether the Commission correctly exercised its power to find appellant in *civil* contempt. Therefore, this appeal should be dismissed for want of a substantial federal question.

Moreover, even if appellant had been adjudged guilty of criminal contempt, this Court has held that the principles referred to in *Bloom* would not be applied retroactively. in *De Stefano v. Woods,* 392 U.S. 631, 634-635, 20 L.ed.2d 1308, 1312 (June 17, 1968) this Court said:

> "However, the tradition of nonjury trials for contempts was more firmly established than the view that States could dispense with jury trial in normal criminal prosecutions, and reliance on the cases overturned by Bloom v. Illinois was therefore more justified. Also, the adverse effects on the administration of justice of invalidating all serious contempt convictions would likely be substantial. Thus, with regard to the Bloom decision, we also feel that retroactive application is not warranted.
>
> "For these reasons we will not reverse state convictions for failure to grant jury trial where trials began prior to May 20, 1968, the date of this Court's decisions in Duncan v. Louisiana and Bloom v. Illinois. . . ."

This quotation from the *De Stefano* case makes it clear that the *Bloom* decision will not be made applicable to trials begun prior to May 20, 1968. The hearings in the proceedings, here under review, began on November 30, 1967. Thus, even on the assumption that all other arguments could be

resolved in favor of appellant, the doctrine of the *Bloom* case is unavailable to appellant in these proceedings.

Appellant refers to "the spirit of decisions of this Court, including two handed down only last year," (Juris. Stat. p. 5) as the reason for its contention that the California Supreme Court erred in its decision in regard to the delegation of contempt powers to state administrative agencies. It is nowhere stated what that "spirit" is, or precisely in which decisions it is to be found, but this does not deter appellant from reaching back seventy-five years for an obscure and obsolete dictum in the vain hope of bolstering its tenuous argument.

This dictum is to be found in an opinion of this Court in *Interstate Commerce Commission v. Brimson,* 154 U.S. 447, 485 (1894), which states that a *federal* administrative agency could not ". . . consistently with due process of law, be invested with authority to compel obedience to its orders" by the use of contempt powers. This Court, however, upheld the I.C.C.'s right to petition to enforce its own subpoena in a court, and to compel Brimson to testify, in order that the agency might be aided to carry out the duties imposed on it by Congress.

Though jurisdiction in federal contempt matters arising from federal administrative orders has now been lodged with the federal courts by statute, this procedure has merely resulted in these courts determining whether or not the administrative agency has performed its functions properly. If so, the federal courts must enforce the agency's orders. (*National Labor Relations Board v. Warren Co.,* 350 U.S. 107, 112-113 (1955).) Thus, this Court has recognized the *de facto* contempt power within federal agencies, though the *form* of enforcement (obtaining a court order) makes enforcement appear to be outside of the agency's power.

In any event, appellant admits that the *Brimson* dictum has been applied only to federal agencies. No decision has been cited by appellant or discovered by the appellee which makes this dictum applicable specifically to the states under the Fourteenth Amendment of the United States Constitution. However, this Court has approved the grant of judicial powers to state administrative agencies for many years. (*Consolidated Rendering Co. v. Vermont,* 207 U.S. 541, 552 (1908); *Carfer v. Caldwell,* 200 U.S. 293 (1906).)

The Commission is an independent agency, deriving its powers and authority from the Constitution and the Legislature of the State of California, including its judicial powers of contempt. (Art. XII, Sec. 22, California Constitution; §§ 312, 2105, 2106, 2113 Public Utilities Code; also *Van Hoosear v. Railroad Comm.,* 189 Cal. 228, 231 (1922); *In re Victor,* 220 Cal. 729 (1934).) Thus, it is evident that the Commission has been delegated judicial powers and the authority to use them. Absent a clear violation of due process of law, and subject to other constitutional limitation, these powers, including the contempt power, may be exercised by the Commission.

Appellant has not made a persuasive argument in support of its assertion that there has been a misdelegation of contempt powers to the Commission. The only basis for the assertion is that appellant's erroneous interpretation of the opinion in the *Brimson* case should somehow become the standard for state administrative agencies, with respect to due process requirements, as applied to the states. In an attempt to buttress this specious argument, appellant recites a number of opinions which are at variance with the facts. There has been no authority cited for appellant's irrelevant assertion:

> "that state administrative agencies are customarily more political in nature and less quasi-judicial in their

approach than federal administrative tribunals, being more often made up of shorter term, non-lawyer, elective, rather than appointive officials, who generally receive lower salaries." (Juris. Stat. p. 7.)

It is not the purpose here to discuss state agencies in general since such discussion would be wholly immaterial and irrelevant. This assertion is a *non sequitur* on its face.

In any event, to set the record straight, the Commissioners are appointed for six year terms that are staggered to provide for continuity of policy, as is the case with United States Senators. Many have been lawyers throughout the history of the Commission, for whatever significance that may have. And, as appellant admits, (Juris. Stat. footnote 1, p. 7), the presiding Commissioner in the proceeding below was a lawyer.

The Government Code of California requires that salaries paid to state officials be comparable to those paid for similar work performed outside of state service (Section 18852 Government Code), but the size of the salary paid is no guarantee of the quality of the service, a fact so well known as to be susceptible of judicial notice. Thus, it is evident that appellant, lacking sufficient basis and authority to support its argument, has presumed upon the patience of this Court with a lot of nonsense which is unworthy of the Court's attention.

In regard to the second question, whether a jury trial is necessary in contempt proceedings before a state administrative agency, it has been stated above that no specific authority has been presented in support of this contention. The *Bloom* and *Brimson* cases, upon which appellant places such great reliance, do not discuss the right to a jury trial as being applicable to an administrative agency's proceedings. In *Bloom* this Court cited the *Brimson* case, and many

others, only for the proposition that this Court had consistently affirmed the power of state and federal *courts* to punish for *criminal* contempt without a jury trial.

The question whether the admitted failure of appellant to comply with the Commission's order was a criminal or civil contempt was squarely before the California Supreme Court. Its attention was directed to the principal criteria used to make such a classification that were set forth by this Court in *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 442 (1911). This Court there held that the fact of punishment alone is not determinative, but rather the character and purpose of the punishment are the decisive factors for classification purposes. If the purpose is *remedial*, the proceeding is one for civil contempt, while if the purpose is *punitive* the contempt is criminal. If the disobedience of the defendant consisted of refusing to do an act that was required by "an order which either in form or substance was mandatory in its character," rather than the doing of an act that was prohibited, the former refusal constituted civil contempt, while the latter (commission of a prohibited act) was a criminal contempt.

The amount of the fine or length of imprisonment are not determinative on this issue. Substantial fines and imprisonment have been imposed by courts, and by administrative agencies, in civil contempt proceedings (*United States v. United Mine Workers*, 330 U.S. 258 (1946); *McCrone v. United States*, 307 U.S. 61 (1939); *Brotherhood of Loc. Fire & Eng. v. Bangor & Aroostook R. Co.*, 380 F.2d 570 (1967); *Parker v. United States*, 153 F.2d 66 (1946).)

The California Supreme Court also was referred to its prior decision in which the distinction between civil and criminal contempt was considered in some detail. In the case of *In re Morris*, 194 Cal. 63, 69 (1924) that Court said:

> "It was the plain intent of the Legislature, expressed in the cited code sections [Section 1209, *et seq.*, Code Civ. Proc., and Sec. 166(4) Pen. Code] to give a double aspect to the wrongful acts there enumerated. In one aspect they are to be regarded as offenses against the dignity and authority of the Court, remediable in accordance with the rules prescribed in the Code of Civil Procedure. In the other aspect they are to be regarded as offenses against the peace and dignity of the People of the State of California and remediable as such in accordance with the rules prescribed in the Penal Code. . . ."

If the proceeding is brought pursuant to Section 1209, *et seq.* (including Section 1218 cited by appellant) of the California Code of Civil Procedure, it is *civil* in character. Conversely, criminal contempt proceedings are brought under Section 166 of the Penal Code and are governed by its procedures exclusively (*In re Bruns,* 15 Cal.App.2d 1, 5 (1936); *In re Morris, supra*).

Appellant does not dispute the fact that Section 1218 of the California Code of Civil Procedure was used to determine the fine imposed by the Commission. The purpose of the fine was coercive, compensatory and remedial, since the Commission wished to remedy the situation, arising out of appellant's failure to comply with its order, by imposing certain mandatory duties on appellant, which, if not performed, would subject it to a fine. Among the duties required of appellant were: (a) to file a plan with the Commission stating how the parking fees collected would be refunded, and (b) to post a "Notice of Refund" so claimants could have an opportunity to reclaim their money. The refunds paid were to be "credited against the fine." (See Decision No. 74006, Appendix A, Juris. Stat. p. 7.)

Had the Commission intended to proceed against appellant in a criminal action, it would have done so under Section 2104 of the Public Utilities Code in superior court for a violation of the Commission order. Such violation is a misdemeanor under Section 2110 of the Public Utilities Code, which sets forth definite and fixed punishment of a $1,000.00 fine or a year's imprisonment, or both.

Therefore, when all the factors discussed above are considered, it is clear that appellant was properly found by the California Supreme Court to be in civil contempt of the Commission. Since the right to a jury trial in contempt proceedings is limited to cases involving criminal contempt, this Court's opinions in *Duncan v. Louisiana,* 391 U.S. 145 (1968) and *Bloom v. Illinois,* 391 U.S. 194 (1968) have no application to these proceedings in civil contempt.

This determination was made by the California Supreme Court. No substantial federal question is involved. Thus, there has been no violation of appellant's constitutional right to a trial by jury pursuant to the Fourteenth Amendment to the Constitution of the United States, and therefore, there is no jurisdiction to take this appeal.

CONCLUSION

The delegation of contempt powers to the Commission is guaranteed by the Constitution of the State of California. It has been supplemented by the California Legislature by provisions enacted as part of the California Public Utilities Code. These contempt powers were properly exercised at all times in these proceedings. The lack of a jury trial in this civil contempt proceeding was not a violation of due process of law under the Fourteenth Amendment to the Constitution. Moreover, the California

Supreme Court has decided the case on other than constitutional grounds. Therefore, since there is want of a substantial federal constitutional question, the decision of the California Supreme Court should be affirmed, or this appeal dismissed.

Respectfully submitted,

MARY MORAN PAJALICH
RODERICK B. CASSIDY
TIMOTHY E. TREACY
JAMES A. BLUMBERG
Attorneys for Appellee
The Public Utilities
Commission of the
State of California

(Appendix A Follows)

Appendix A

California Code of Civil Procedure

§ 1209. Acts or omissions constituting

The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

3. Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service;

4. Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court;

5. Disobedience of any lawful judgment, order, or process of the court;

6. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

7. Unlawfully detaining a witness, or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

8. Any other unlawful interference with the process or proceedings of a court;

9. Disobedience of a subpena duly served, or refusing to be sworn or answer as a witness;

10. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with

a party to an action, to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

11. Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

No speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings.

§ 1211. Summary punishment; order; affidavit or statement of facts

When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed.

When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officers.

§ 1212. Warrant of attachment; issuance; order to show cause; warrant of commitment

When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

§ 1217. Trial

When the person arrested has been brought up or appeared, the court or judge must proceed to investigate the charge, and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time if necessary.

§ 1222. Conclusiveness of judgments and orders

The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive.

California Penal Code

§ 166. Criminal contempts; conduct constituting

CRIMINAL CONTEMPTS. Every person guilty of any contempt of Court, of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any Court of justice, in immediate view and presence of the Court, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any Court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law;

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any Court;

4. Willful disobedience of any process or order lawfully issued by any Court;

5. Resistance willfully offered by any person to the lawful order or process of any Court;

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question;

7. The publication of a false or grossly inaccurate report of the proceedings of any Court;

8. Presenting to any Court having power to pass sentence upon any prisoner under conviction, or to any member of such Court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this Code.

California Public Utilities Code

312. The commission and each commissioner may issue writs of summons, subpenas, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt, in like manner and to the same extent as courts of record. The process issued by the commission or any commissioner, extends to all parts of the State and may be served by any person authorized to serve process of courts of record, or by any person designated by the

commission or a commissioner. The person executing any such process shall receive such compensation as is allowed by the commission, not to exceed the fees prescribed by law on August 8, 1915, for similar services, and such fees shall be paid in the same manner as provided in this part for payment of the fees of witnesses.

Chapter 11. Violations

2100. Whenever the commission, after a hearing, finds that any common carrier, other than a railroad corporation, has charged, collected, or received, a lesser compensation for the transportation of persons or property, or for any service in connection therewith, than the applicable rates, fares, and charges, specified in its tariff schedules filed and in effect at the time, or that such carrier has refunded or remitted in any manner or by any device any portion of the rates, fares, or charges so specified without an order of the commission so authorizing, the commission shall require the carrier to collect the undercharges involved and may impose upon the carrier a fine equal to the amount of such undercharges. All such fines shall be paid into the State Treasury to the credit of the General Fund. The remedy and penalty provided by this section shall be cumulative and shall not be a bar to or affect any other remedy or penalty provided for in this part, or to the exercise by the commission of its power to punish for contempt.

2105. All penalties accruing under this part shall be cumulative, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility, or any officer, director, agent, or employee thereof, or any other corporation or person, or to the exercise by the commission of its power to punish for contempt.

2106. Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was wilful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

No recovery as provided in this section shall in any manner affect a recovery by the State of the penalties provided in this part or the exercise by the commission of its power to punish for contempt.

2110. Every public utility and every officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the Constitution of this state or of this part, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in such violation or noncompliance in a case in which a penalty has not otherwise been provided is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.